

ORIGINAL

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Eugene Sander
580 5 Ave Room 602
NY NY 10036

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FCC MAIL ROOM

Dec 23-99

TO: Ms. Maglie Roman Salas
Secretary
FCC
Washington DC

RE: CC Docket No. 96-45 - Appeal by UNITED TALMUDICAL ACADEMY

Dear Madam:

Please be advised that I have spoken today ex-parte to Ms. Saras Whitesell, legal advisor to Comm TRistonei.

I have faxed Ms. Whitesell the enclosed 14 pages.

Thanks

Eugene Sander

No. of Copies rec'd 0
List ABCDE

**United
Talmudical Academy
"Torah V'Yirah"**



ישיבה ומתיבתא
תורה ויראה
דדבינו יראו ויפחדו
מסאטמאר

בס"ד

August 11, 1999

Federal Communications Commission
Office of the Secretary
445 12th Street, SW Room TW-A325
Washington, D.C. 20544

Dear Sir/ Madame:

Enclosed please find an original and four copies of the United Talmudical Academy (UTA) appeal of a Decision of the Universal Service Administrative Company's Schools and Libraries Division (SLD), with respect to the denial of the UTA's *Application for Funding for the year 1998*.

I should add that after this appeal was prepared, the UTA received a response (copy attached) to its request for the SLD's records. This response is not adequate. Ms. Wolfhagen of the SLD in addressing question one from our July 21 communication (copy attached) replies in the narrowest sense of our request, missing, perhaps inadvertently, the intent of our request. We understand that we have not failed to follow any specific FCC rules. What we are asking is for the citation of those specific rules that create the authority serving as the bases for the denial that is given in the earlier letter sent by Ms. Kriete in February, 1999 (copy attached). Or, put another way, what is the rule structure that supports the denial of our application? This is rather straightforward.

The response to our second request provided us with SLD's procedure, but failed to give a clear reason for the denial.

The response to the third request suggests a variety of problems with our figures based upon SLD analysis, without providing the bases for the analysis. We need the figures and assumptions that guide this analysis to be able to explain our position. Otherwise we are forced to respond to finding of 5 % and 20% discrepancies without knowing how these percentages were arrived at, or if in fact such discrepancies are real.

I therefore request that the UTA be provided with the necessary information that we have requested, and that we be given the opportunity to inspect the records that are relevant to the denial of our application for funding. I also request an appropriate extension of time to frame a supplemental brief based on SLD's response to this request, once it is received.

Sincerely,
Moses Greenfeld
Moses Greenfeld

cc: Ms. Ellen Wolfhagen
Universal Service Administrative Co. Schools & Libraries Division
2120 L St. N.W. Suite 600
Washington, D.C. 20037
with one copy of appeal and exhibits via Express Mail on Aug.11,1999

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BRANCH OFFICES:

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of:

Request for Review by
the United Talmudical Academy
of the Decision of the Universal Service Administrator

FCC Docket Nos.
97-21 and 96-45

Review of Form 471
Application No. 105791
(1998 Funding Year)
Billed Entity No. 155580

PRELIMINARY STATEMENT

The United Talmudical Academy, of Brooklyn, New York (hereinafter "UTA"), hereby appeals and seeks *de novo* review of the "Administrator's Decision on Appeal" denying Basic Voice Telephone Service funding under the UTA's Form 471 application to the Universal Service Administrative Company's Schools & Libraries Division, pursuant to 47 CFR §§ 54.719(c) and 54.723. In this appeal, the UTA limits and modifies its original request and appeal to only that portion seeking Basic Voice Telephone Service funding. All other aspects of the UTA's initial application and subsequent appeal to the Administrator are withdrawn.

The UTA is a private, non-profit, Brooklyn, New York, educational institution providing primary and secondary schooling to over 6,500 local students. It is an aggrieved party before the Federal Communications Commission as its request for appropriate funding pursuant to the Telecommunications Act of 1996 was improperly denied, as is more fully explained below.

As a preliminary matter, by letter to the Administrator, dated July 21, 1999, the UTA formally stated its intent to appeal and requested information and discovery relating to the Administrator's improper determination (copy annexed hereto as Exhibit A). To date the Administrator has failed to respond to this request and has prejudiced the UTA's ability to present a proper Request for Review. *It is therefore respectfully requested that the UTA's time to file this*

*Request for Review be extended until a reasonable time after the UTA's request for discovery is complied with.*¹

In consideration of the looming appeal deadline, the following Request for Review is submitted with a reservation of rights to file a supplemental Request for Review once UTA's discovery request is complied with.

STATEMENT OF FACTS

By application dated April 7, 1998, submitted on FCC Form 471 ("Services Ordered and Certification Form") to the Schools and Libraries Corporation/Division ("SLD"), a division of the Universal Service Administrative Company, certified by the UTA's Administrator, Rabbi Leib Glanz, the United Talmudical Academy requested various funding pursuant to the 1996 Telecommunications Act for the 1998 funding year. A copy of the Form 471 application is annexed hereto as Exhibit B.

In response the SLD requested additional information regarding the UTA's Item 22 certification on the Form 471 application (relating to the UTA's ability to secure access to all resources and make effective use of the services purchased under the program). Although no FCC Rule or Regulation was referenced for this seemingly unauthorized expansion of the UTA's Form 471 application, *the UTA complied* with the SLD's request and supplied the requested information on the SLD's "Item 22 Worksheet," together with a financial statement of the UTA showing its ability to properly secure the needed resources and services, as well as a Board Resolution

¹ The Court of Appeals for the District of Columbia Circuit, in MCI v. FCC, et al., 515 F.2d 385, 392 (1974), specifically addressed this issue at length and found that "in order to prepare accurate and well formed petitions for review, we repeat, litigants must have recourse to complete statements of the decisions and orders which they undertake to challenge."

authorizing the appropriate expenditures. A copy of the UTA's reply is annexed hereto as Exhibit C.

By letter dated January 13, 1999 (copy annexed hereto as Exhibit D), the SLD's Selective Review Manager demanded "additional information" and set out five questions to be responded to. The UTA immediately complied and responded with detailed answers to the five questions (copy of answers annexed hereto as Exhibit E).

By letter dated February 26, 1999 (copy annexed hereto as Exhibit F), the SLD denied the UTA's entire Form 471 application based solely on its "finding that you have not secured access to all resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as pay the discounted charges for eligible services." Interestingly, the denial tracks the language of the aforementioned Item 22 certification, with nothing further. No explanation is given for the SLD's right or ability to question the certification, nor for its apparent disregard for the UTA's financial statements and the resources attested to therein.

By "Letter of Appeal," with attachments, dated March 24, 1999 (copy annexed hereto as Exhibit G), the UTA requested review of the SLD's determination pursuant to the suggested procedure of Appeal to the Administrator prior to the instant appeal to the FCC. In its Letter of Appeal the UTA recognized the SLD's unwillingness to accept the UTA's representations of its financial resources and administrative abilities. It therefore modified and limited its original FCC Form 471 application for funding to those services and resources already paid for, billed for, or partially implemented. Its actions thereby negated any question the SLD could possibly or properly have *vis a vis* the UTA's ability to "secure access to all resources." Having secured the requisite access, paid the "discounted charges for eligible services" and implemented the requisite

in-house programming, the UTA removed any and all doubts the SLD raised in its very narrow but clear denial of its Form 471 application.

Nonetheless, by "Administrator's Decision on Appeal" dated July 14, 1999 (copy annexed hereto as Exhibit H), the SLD denied the UTA's appeal citing its inability to allow the modification of the Form 471 application and approve of it in part rather than as a whole. While apparently accepting the UTA's basis and foundation for appeal (thus determining that under a different set of circumstances the appeal would be granted), the SLD advised of a "concept" that the "application as a whole must pass scrutiny, without regard to whether resources can be allocated differently to cover a portion of the expenses."

The UTA now seeks *de novo* review of the Administrator's actions. The UTA's request is simplified in that it now limits its appeal to only the Basic Voice Telephone Service funding aspect of its original application (Exhibit B) and Letter of Appeal (Exhibit G, Item 1).

ARGUMENT

The UTA seeks a reversal of the underlying Administrator's determinations denying funding under the Telecommunications Act of 1996. The UTA respectfully submits, on this appeal, a modified application seeking funding only for that portion of the application regarding the Basic Voice Telephone Service, and requests that the modified application be granted on its own, admitted, merit. The UTA further submits that (a) the SLD should have granted the UTA's modified request on the initial SLD appeal, that (b) once it certified Item 22 on the original Form 471 application (regarding ability to secure appropriate resources) the SLD had no authority to question that certification, that (c) the UTA's response to the SLD's Item 22 clarification request

was nevertheless complete and proper, and that (d) the UTA was denied basic due process by the SLD.

The UTA, in this appeal, only seeks funding for the Basic Voice Telephone Service part of its original application. Although its original application, it is contended, was proper as a whole, it is the Basic Voice Telephone Service denial that is most ripe for review. The UTA on its original Form 471 application submitted requests for various funding under the Telecommunications Act. It submitted its request on one application. The Administrator has apparently decided that if only one application is submitted, any portion of the application that can be rejected serves to nullify the entire application. This is patently unfair. If part of the application is valid and deserving of award, as is implied by the Administrator (Exhibit H), it should not be denied because of its association to allegedly invalid portions of the applications. All the more so on the appeal wherein only those parts that were definitively valid were presented for review. The Administrator need not have reviewed the entire application, having been presented with a limited and modified application on appeal such as it was. That is the purpose of a *de novo* review.

Of importance, therefore, is the fact that the SLD has allowed applicants to file multiple Form 471 applications, thereby providing for the addressing of a many faceted request for funding in a bifurcated or compartmentalized manner. In other words, an institution seeking Basic Telephone Voice Service *and* Internal Connections can make **two** applications; should one fail the other remains valid. This was done in an apparent attempt to recognize the propriety of the allocation of resources to different parts of the funding program without limiting an institution's ability to obtain funding for one service over another. The "concept" (Exhibit H), therefore, of an application requirement to pass muster as a whole and not in part, is negated by the

Administrators own Rules allowing for the submission of several "part" applications.

The Administrators decision which rejects out of hand the entire UTA application because of the invalidity of a part of it, is therefore "conceptually" abhorrent to its own process and procedure allowing for the submission of part applications on many forms instead of whole applications on one form. This is underscored by the Administrator's reliance on a "concept" (Exhibit H) rather than a Rule or Regulation. The UTA has recognized that certain portions of its application should be revised and separated for the application process of the next funding year so as to better comply with the purposes of the Telecommunications Act of 1996, and it is committed to doing so. It should not be punished for this however, and it should not be denied funding that has been granted by Congress for appropriate portions of its applications simply by reason of not submitting several applications instead of one.

It should be emphasized that, to date, the Administrator has not made clear exactly why the balance of UTA's application (not presented for review) has been denied. Clearly the Administrator's perfunctory denial of the entire application as violative of the "rules," without reference to which rules, and as an application that fails to provide for the appropriate resources, without explanation as to why and without regard to those portions that clearly do meet the 'resources' criteria, is a slap in the face of the most basic constitutional protections for governmental entitlements and due process of law. Neither the SLD nor the FCC provided notice of and an opportunity to comply with its orders regarding the preparation of the Form 471 applications. The general public was put to the test to submit applications blindly. Yet the applications were held to the strictest of standards. Any portion of an application that was improper apparently invalidated the entire request - according to the "rules."

Nor was the SLD's review process beneficial even as to a simple explanation of the

purported 'rules' that precluded funding to the UTA on its Form 471 application. The Administrator's decision on appeal limited its determination to two sentences (Exhibit H):

"The necessary resources standard is one that is applied against the entire application, not to individual Funding Request Numbers (FRNs). This policy is based on the concept that the application as a whole must pass scrutiny, without regard to whether resources can be allocated differently to cover a portion of the expenses."

The determination admits the propriety of a portion of the application presented for appeal and summarily dismisses its validity as an application that is associated with improper requests. Almost like 'guilt by association,' to turn a common phrase. Certainly it is not in confluence with basic due process.

Ultimately, it is for this appeal before the FCC to determine the propriety and cogency of the UTA's request for funding. The request is limited and the SLD has indicated that the portion presented on appeal would have been funded 'but for.' Under those few rules posted for the public to review it is clear that this appeal is one for a *de novo* review. Such a review is complete and can encompass all aspects of the initial application and decision. In other words, a modification of the initial application when presented in this forum is proper and should be allowed to stand on its own merits. When combined with the actual expenditures of the UTA in this modified request the initial denial based on an inability to secure resources becomes moot and the application is left standing with no reason why it should not be granted. It could be said that this forum need not even review the UTA's response to the item 22 worksheet as it has no relevance in the face of the resources already secured. The item 22 worksheet, after all, is geared towards verifying the future *ability* to secure resources, and the UTA has proven it already has this ability.

CONCLUSION

Based upon all the foregoing, it is respectfully requested that prior to the making of a final determination by the FCC the UTA be given an opportunity to review all the records of the SLD as they specifically pertain to the UTA's application so as to allow the UTA to submit a more informed and properly prepared supplemental memorandum on appeal to the FCC.

It is further requested that the UTA's request for Basic Voice Telephone Service funding be reviewed, *de novo*, and upon such review be granted in its entirety as a modified Form 471 application for funding.

The undersigned hereby verifies that I have read the foregoing, and that to the best of my knowledge, information and belief there is good ground to support it, and it is not interposed for delay.

Dated: August 10, 1999
Brooklyn, New York

Respectfully submitted,

Mozes Greenfeld
Telecommunications Project Director
United Talmudical Academy
82 Lee Avenue
Brooklyn, New York, 11211
(718) 963-9260, ext. 222
Fax: (718) 963-2172

USAC
UNIVERSAL SERVICE
ADMINISTRATIVE CO.
Schools and
Libraries Division

Box 125 - Correspondence Unit
100 South Jefferson Road
Whippany, NJ 07981
Phone: 888-203-8100

February 26, 1998

United Talmudic Academy
Mr. Mozes Greenfield
82 Lee Avenue
Brooklyn, NY 11211

Re: Form 471 Application Number: 105791
Funding Year: 1998
Billed Entity Number: 155580

Dear Applicant:

We have completed our review of your Form 471, Services Ordered and Certification Form, and have determined that you do not qualify for funding under the FCC rules governing the Schools and Libraries Universal Service Program.

This determination is based on our finding that you have not secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as pay the discounted charges for eligible services.

This determination was made after careful review of the information that you provided to the fund administrator concerning the availability of all resources necessary to make effective use of the services purchased as well as to pay for the discounted charges for eligible services.

If you have any questions about our decision, please send them in writing to the Schools and Libraries Division-Universal Service Administrative Company, Box 125 - Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07891.

Sincerely,

Debra M. Kriete

Debra M. Kriete
General Counsel
Schools and Libraries Division
Universal Service Administrative Company



UNIVERSAL SERVICE
ADMINISTRATIVE CO.

SCHOOLS & LIBRARIES DIVISION

2120 L Street, N.W., Suite 600
Washington, D.C. 20037
Voice: (202) 776-0200 Fax: (202) 776-0080

July 14, 1999

ADMINISTRATOR'S DECISION ON APPEAL

Mr. Mozes Greenfeld
United Talmudical Academy
82 Lee Avenue
Brooklyn, New York 11211

Re: United Talmudical Academy
Form 471 Application Number: 105791 Funding Year 1998
Billed Entity Number: 155580

Dear Mr. Greenfeld:

The purpose of this letter is to inform you of the decision made on your appeal, dated March 24, 1999 in regard to the cited application. The rejection of your application based on your inability to secure access to all the resources necessary to make effective use of the services, as well as being able to pay the discounted charges for eligible services, has been upheld for the following reason:

The necessary resources standard is one that is applied against the entire application, not to individual Funding Request Numbers (FRNs). This policy is based on the concept that the application as a whole must pass scrutiny, without regard to whether resources can be allocated differently to cover a portion of the expenses.

While we appreciate that you have taken the necessary steps to modify your technology plan and reapply for Year Two funding, we cannot accept your proposal to separate out specific items from your rejected Form 471.

If you feel further examination of your application is in order, you may file an appeal with the Federal Communications Commission, Office of the Secretary, 445 12TH Street, S.W., Room TW-A325, Washington, DC 20554. Before preparing and submitting your appeal, please be sure to review the FCC rules concerning the filing of an appeal of an Administrator's Decision, which are posted on the SLD Web Site at <www.sl.universalservice.org>. You must file your appeal with the FCC no later than 30 days from the date of the issuance of this letter, in order for your appeal to be filed in a timely fashion.

If you have any questions, please feel free to call me directly at (202) 263-1606.

Sincerely,

A handwritten signature in cursive script, reading "Ellen Wolfhagen".

Ellen Wolfhagen
Counsel

**United
Talmudical Academy
"Torah V'Yirah"**



**ישיבה ומתיבתא
תורה ויראה
דרבינו יואל מסאטמאר**

July 21, 1999

כס"ד

Ms. Ellen Wolfhagen
Universal Service Administrative Co.
2120 L Street NW Suite 600
Washington, D.C. 20037

Via: Fax # 202 776-0080
& regular mail

CONTACT: Mr. Eugene Sander
580 Fifth Avenue, Room 602 NY, NY 10036
Tel: 212 354-2601; Fax 212 730 1960

RE: Administrator's Decision on Appeal
Form 471 Application Number: 105791
Funding Year 1998; Billed Entity Number 155580

Dear Ms. Wolfhagen:

We received your communication of July 14 informing us of the decision made on our appeal. You write that the appeal was rejected based on our "inability to secure access to all the resources necessary to make effective use of the services, as well as being able to pay the discount charges for eligible services." Furthermore you write that the standard in question is applied "against the entire application." etc.

You advise us that we may appeal this decision to the FCC.

We intend to file an appeal and in order to prepare a focused appeal we respectfully request:

1. The FCC rules we failed to follow in the preparation of our application:
2. The finding which reports that we have not secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services:
3. The review that was made of the information that we provided to the fund administrator concerning the availability of all resources necessary:
4. The complete file containing all information concerning our application.

This will enable us to better respond to the ruling. As you may well appreciate we will be needing this information to file a proper and informed appeal. As the decision reads now it is quite general, making it hard for us to determine precisely the basis for denial.

Sincerely,


Moze Greenfeld

USAC
UNIVERSAL SERVICE
ADMINISTRATIVE CO.

SCHOOLS & LIBRARIES DIVISION

2120 L Street, N.W., Suite 600
Washington, D.C. 20037
Voice: (202) 776-0200 Fax: (202) 776-0080

August 9, 1999

Mr. Mozes Greenfeld
United Talmudical Academy
82 Lee Avenue
Brooklyn, New York 11211

Re: United Talmudical Academy
Form 471 Application Number: 105791 Funding Year 1998
Billed Entry Number: 155580

Dear Mr. Greenfeld:

The purpose of this letter is to respond to your letter of July 21, 1999. In order to assist you in filing a focused appeal, we are happy to provide you with the following information (items in italics relate to your original questions):

1. The FCC rules you failed to follow in the preparation of your application:

You did not fail to follow any specific FCC rules in the preparation of your application. Rather, the reason your application was denied had to do with the question of necessary resources (see below).

2. The finding which reports that you have not secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of all the services:

Applications of a similar size and make-up to yours are subject to an "Item 22" review. Item 22 is the certification which is part of the application that the applicant has "secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of all the services ordered." That certification is made with respect to the entire application, and therefore the entire application is subject to review.

United Talmudical Academy
August 9, 1999
Page 2

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3. *The review that was made of the information you provided concerning the availability of all resources necessary:*

Again, the review that was undertaken had to do with the Item 22 certification. In the case of United Talmudical Academy, we reviewed the supplemental information which was received on or about October 14, 1998. SLD staff performed an analysis to compare the numbers provided with expected expenditures necessary to support the services requested in various categories. The results of that analysis indicated a deficiency in the areas of Hardware, Professional Development, Software, and Maintenance. The differential in the numbers ranged from at least 5% to as much as 20%. It is also noted that United Talmudical Academy indicated a wish to change their initial request and reduce it from approximately \$3.4 million to \$238,451, an indication to SLD staff that the applicant recognized that the resources available could not support such an extensive service request.

4. *The complete file containing all information concerning your application:*

Although I would like to be able to provide you with your file, I believe that you already have in your possession all of the documents which were submitted to us. The additional items in the file reflect our confidential Program Integrity Assurance procedures, which are not subject to disclosure. Among our reasons for this non-disclosure policy is the fact that it would be unreasonable and prejudicial to reveal information to you that is not generally available to all applicants.

While I could not provide all of the items that you have requested, I do feel that I have adequately assisted you in preparing an appeal for filing with the Federal Communications Commission. If you have any questions, please feel free to call me directly at (202) 263-1606.

Sincerely,



Ellen Wolfhagen
Counsel
Schools and Libraries Division

Robert Hahn
202-263-1606
Hahn